* **THE HON'BLE MR JUSTICE J.CHELAMESWAR**

AND

THE HON'BLE MR JUSTICE D.APPA RAO

+WP.No.23944 of 2006

% Dated 19-01-2007

 # Kura Rajaiah @ K.Rajanna @ K.R., & others.

PETITIONERS

VERSUS

$ Government of Andhra Pradesh,
Represented by its Principal Secretary (Home)
and 14 others.,

RESPONDENTS

! Counsel for Petitioners: MR. Chalakani Venkat Yadav,
MR. Ch. Siddaiah
MR. V.Gopinath

^Counsel for Respondents: Advocate General
Mr. B.Adinarayana Rao for RR 7 to 15.

<GIST:

> HEAD NOTE:

? Cases referred

1. (1994) 3 SCC 440
2. (1976) 3 Cr App R 270
3. 1997(4) ALT 541 (DB)
4. 1969 (1) SCC 292

IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
And
THE HON'BLE SRI JUSTICE D.APPA RAO

WP No. 23944 of 2006

Between :

Kura Rajaiah @ K.Rajanna @ K.R.,
and four others .. Petitioners

and

Government of Andhra Pradesh
Represented by its
Principal Secretary (Home) and
14 others .. Respondents

Dated : 19th January, 2007

JUDGMENT (per JC,J)

This writ petition is filed by five petitioners with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a Writ of Habeas Corpus or any other writ, order or direction more in the nature of Habeas Corpus, directing the respondents to produce the petitioners before this Hon'ble Court and set them at liberty and pass such other order or orders which this Hon'ble Court may deem fit, just and

necessary in the circumstances of the case."

There are fifteen respondents who are officers of the State of Andhra Pradesh in the Police Department. The 1st petitioner claims to be the General Secretary of a political party known as CPI (ML) Janashakti party. The others are the followers of the 1st petitioner. The 2nd and 3rd petitioners are the natives of Andhra Pradesh, 4th and 5th petitioners are claimed to be the residents of Mumbai and Ranipur in Uttar Pradesh respectively. Admittedly all the petitioners gathered at Barabankhi of Uttar Pradesh for the purpose of attending a meeting of their party on 31.8.2006. Respondents 7 to 15 herein apprehended them and brought them to Andhra Pradesh in two vehicles and produced before Judicial First Class Magistrate (JFCM), Metpally, Karimnagar District. As to the manner of the apprehension of the petitioners at Barabankhi, there is some difference between the version of the petitioners and the respondents herein, the details of which will be discussed later.

The petitioners were produced before JFCM, Metpally in connection with Crime No. 174 of 2006 of Metpally Police Station dated 1.9.2006 initially registered under Sections 143, 353, 224 r/w 149 IPC. The said offence came to be registered according to the respondents in the Metpally Police Station in the following factual background as per the version of the respondents:

That the 3rd respondent herein constituted a special party consisting of respondents 7 to 15 headed by the 7th respondent for the execution of the NBWs issued in PRC Nos. 161 of 2005, 4 of 2005, 154 of 2005, 173 of 2005 and 169 of 2005 against the 1st petitioner herein issued an authorization to apprehend the 1st petitioner at Barabankhi of Uttar Pradesh. In pursuance of the said authorization, the respondents

7 to 15 proceeded to Barabankhi. On 31.8.2006, the said respondents located the 1st petitioner and when they tried to apprehend the 1st petitioner, the petitioners resisted. Therefore, the other petitioners also were apprehended and put them into two vehicles, rushed to Barabankhi Police Station, informed the local police regarding the apprehension of the petitioners and that they were being taken to Andhra Pradesh. According to the affidavit filed by the 7th respondent, the 7th respondent and his party along with the petitioners reached Venkatraopet village within the limits of Metpally Police Station on 1st September, 2006 at about 10.35 PM as one of the petitioners wanted to answer the calls of nature, the vehicles were stopped and taking advantage of the situation, the petitioners attempted to escape the custody, but they were subdued and taken to Metpally Police Station and handed them over to the 6th respondent, the Sub Inspector of Metpally Police Station along with a report on the basis of which the above mentioned Crime No. 174 of 2006 of Metpally Police Station referred to earlier was registered. Thereafter, the petitioners were produced before JFCM, Metpally on 2.9.2006 in connection with the above mentioned offence in Cr.No. 174 of 2006. The JFCM directed them to be remanded to judicial custody.

The fact that the petitioners were produced before JFCM on 2.9.2006 is not in dispute.

On the other hand, it is the case of the petitioners that when the respondents 7 to 15 sought to arrest the 1st petitioner the respondents did not inform the reasons for the arrest of the 1st petitioner nor was any warrant of arrest shown to the 1st petitioner. Therefore the arrest of the 1st petitioner was resisted by the others resulting in a scuffle. Thereupon, the police of Barabankhi apprehended both the

scuffling parties and taken to Barabankhi police station and only after verifying the identity of the respondents 7 to 15 and getting confirmation from the State of Andhra Pradesh in that regard, the respondents 7 to 15 were allowed to take the petitioners along with them. The relevant portion of the petitioner's affidavit reads as follows :

> "…. hearing the commotion, police from the police station which is opposite to the bus stand came running to the place and took all of us and respondents 7 to 15 to the police station. The police of Barabankhi were not convinced that respondent Nos. 7 to 15 belong to police of Andhra Pradesh since no identity was shown to them and kept all of us in the police station for some time. Meanwhile, the police contacted some one at Andhra Pradesh and when the police of Barabankhi received confirmation from their source that the other group who claimed that they are police are really police from Andhra Pradesh allowed them to take us along with them. They took us in two vehicles. They brought us to Metpally police station in Andhra Pradesh on 01.9.2006. After some time, they produced us before JFCM, Metpally, who remanded us to judicial custody."

It is the case of the petitioners that insofar as the petitioners 2 to 5 are concerned, as there was no crime registered against them at any point of time prior to the arrest and the police (respondents 7 to 15) concocted the story and created a crime which eventually came to be registered as Cr.No. 174 of 2006 of Metpally Police station. The relevant portion of the affidavit filed in support of the writ petition reads as follows :

> "… In order to produce us before

> JFCM Metpally, the police made a concocted a story that we tried to escape from the custody of the police, upon that they registered a crime against us and produced us before the Judicial Magistrate at Metpally. Yet another story of recovery was also created. From the fact that we were produced before the JFCM, Metpally, shows that there are no warrants pending against us and that no court issued warrants of arrest against us and that the police have come to Barabankhi in order only to execute those warrants…."

It is the further case of the respondents that on production of the petitioners before the 6th respondent, a Crime No. 174 of 2006 was registered and during the course of investigation of that crime, the 5th respondent examined the petitioners and according to the affidavit filed by the 5th respondent each one of the petitioners confessed to the fact of each one of them were in possession of some weapons and explosives, the relevant portion of the 5th respondent's affidavit reads as follows :

> "…the same was handed over to me for investigation, as the petitioner herein is involved in number of heinous offences like murders in the State of Andhra Pradesh. During the course of further investigation, I have examined the petitioner who is A1 in the above said crime and he revealed his name as Kurra Rajaiah @ K. Rajanna @ K.R., R/o Boinavada, Vemulawada and Central Committee Secretary of CPI ML Janashakthi and he has also further confessed that he is having one .32 pistol with 4 live cartridges and a cash of Rs.3.00 lakh which

were kept in his bag. On the above confession, his bag was checked and found .32 pistol with 4 live cartridges and cash worth Rs.3.00 lakh with 500 denominations. He has also stated that he has extorted the above said money from various sources and the same were seized under the cover of panchanama in the presence of mediators. On examination, Yerramreddy Narasimha Reddy @ Satyam who is A2 in the above crime, confessed that he is the State Committee Secretary of CPI ML CP Janashakthi, and he is having HE (High Explosives) 36 hand grenade, 9 live rounds of 8 mm ammunition and party literature which were in his bag and the same was also seized under the cover of separate panchanama in the presence of mediators. On examination, Nambhi Narasimhaiah @ Ram Pullaiah, who is A3 in the above crime confessed that he is State Committee Member of CPI ML CP Janashakthi and he is in possession 20 electric detonators and party literature which was kept in his bag. The same was also seixed under the panchanama. On examination, Ramkishan Pawar @ Ram who is A4 in the above crime confessed that he is the State Committee Secretary of CPI ML CP Janashakthi of Maharashtra State and he is in possession 20 electric detonators and party literature. By saying so, he picked up his bag and handed over the above mentioned items to me and the same were seized under the cover of Panchanama. On examination, Ashok Kumar Rajputh who is A5 in the above crime confessed that he is District Committee Secretary of CPI

> ML CP Janashakthi of Biznur district of UP State and he in possession 8 live ammunition of 9 mm and party literature and the same were seized under the cover of Panchanama…"

Basing on the above mentioned alleged confessions, the 5th respondent filed an application before the JFCM, Metpally requesting the JFCM to amend the FIR, the relevant portion of the Memo reads as follows :

> "Therefore the Hon'ble Court is requested to add section of law 506, 120(B), 124-A IPC, Section 7 of Criminal law Amendment Act, Sec 25(1)(B)(a) of the Arms Act 1959 and Sec 5 of ES Act 1908 to original section of law 143, 353, 224 r/w 149 IPC."

The petitioners challenged their custody although by judicial order dated 2.9.2006 on the following grounds :

(1) that the arrest of the petitioners at Barabankhi is illegal as it is not in accordance with the procedure established by law;

(2) the production of the petitioners before the JFCM, Metpally itself is illegal and consequently the order of the JFCM, Metpally directing the petitioners to be remanded is also illegal.

The petitioners pleaded that there was a violation of Sections 41, 46, 50 and 50(A) of the Criminal Procedure Code thereby resulting in infringement of fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

Admittedly, except Cr. No. 174 of 2006 of Metpally Police Station there was no crime registered against the petitioners 2 to 5. At any rate nothing is brought on record to demonstrate that petitioners 2

to 5 are accused of any crime in the State of Andhra Pradesh or elsewhere. However, insofar as the 1st petitioner is concerned, the respondents case is that he is accused in five criminal cases which are numbered as PRC Nos. 161 of 2005, 4 of 2005, 154 of 2005, 173 of 2005 and 169 of 2005 and in each one of the PRCs warrants were issued by JFCM, Sircilla for the arrest of the petitioner. According to the respondents, the 1st petitioner is an accused in each one of the above mentioned PRCs of various charges including Section 302 IPC in four out of the five PRCs and an offence under Section 307 insofar as PRC No. 154 of 2005 is concerned. It is stated so in the affidavit filed by the 5th respondent. The respondents also filed Xerox copies of the warrants said to have been issued by the JFCM, Sircilla in connection with the above mentioned PRCs against the 1st petitioner. Though the learned Senior Counsel Sri Tarakam appearing for the petitioners disputes the existence of such warrants on the date of apprehension of the petitioners (31.8.2006), the Xerox copy of the warrant allegedly issued in connection with the PRC No. 161 of 2005 indicates that it was issued on 12.12.2006. Insofar as PRC No. 4 and 155 of 2005 were concerned, the Xerox copies of the warrants do not disclose any date. Insofar as the PRC Nos. 173 and 169 are concerned, they are apparently issued subsequent to the detention of the petitioners as they bear the dates 24.11.2006 and 7.10.2006 respectively.

Article 21 of the Constitution guarantees every person a fundamental right not be deprived of his life or personal liberty except according to the procedure established by law. Article 22 confers another fundamental right on every person who is arrested i.e., a person arrested shall not be detained in custody without being informed the grounds for such arrest. It further mandates that such information shall be given ***"as soon as may be".***

For the purpose of Criminal Procedure Code, offences are classified as cognizable and non-cognizable. The expression `cognizable offence' is defined under Section 2(c) of the Code which reads as follows :

> (c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without ***warrant;***

It can be seen from the said definition that a person accused of a cognizable offence can be arrested by a police officer even without a warrant. The expression `warrant' is not defined in the Criminal Procedure Code.

Chapter V of the Code of Criminal Procedure deals with the arrest and detention of persons and the procedure connected therewith. Section 70 to Section 81 of the Code deal with the warrants of arrest, form and procedure of issuing the warrants of arrest and the consequences of the issuance of the warrant etc. Under Section 70, a `warrant of arrest' can be issued by a court in writing signed by the Presiding Officer. Such a warrant once issued remains in force until either it is cancelled by the Court who issued it or it is executed. Under Section 72, a `warrant of arrest' is ordinarily directed to one or more police officers by the Court issuing the same and in case where no police officer is immediately available, the Court is also empowered to direct any person other than a police officer to execute such warrant. The other provisions dealing with the execution of warrants will be examined at the appropriate place in this judgment.

Section 41 of the Code authorizes a police officer to arrest any person even without a warrant in the various contingencies

contemplated under that Section which reads as follows:

> **41 When police may arrest without warrant**
> (1) Any police officer may, without an order from a Magistrate and without a warrant, arrest any person,-
>
> (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
> (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or
> (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or
> (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
> (e) who obstructs a police officer while in the execution of his duty, or who had escaped, or attempts to escape, from lawful custody; or
> (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
> (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an

offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section356; or
(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer-in-charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in Section 109 or Section 110. Corresponding old law Sections 54 (1) and S.55 of the Code of Criminal Procedure, 1898 (1) of the Code (V of 1898).

Section 50 of the Code mandates that a person arrested without warrant shall forthwith be communicated the full particulars of the offence for which such a person is arrested. Section 50 reads as follows :

50 Person arrested to be informed of grounds of arrest and of right to bail
(1) Every police officer, or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other

grounds for such arrest.
(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. Corresponding old law.-The present section is a new provision.

Section 51 empowers the search of the person arrested and authorizes the seizure of the articles found on the person.[1] Section 52 authorises the seizure of offensive weapons if any from the arrested person.[2]

Section 55 authorises the police officer incharge of a police station to authorize any officer subordinate to him to arrest any person who may lawfully be arrested without a warrant. Such an authorization is required to be in writing specifying the person to be arrested and the offence for which such an arrest is required to be made. Section 55 also mandates that if a person is sought to be arrested by a police officer other than the officer incharge of a police station, the authorization issued under Section 55 by the officer incharge of the police station is required to be shown to the person sought to be arrested - if demanded.

Section 78 and 79 deal with the warrants issued by a court which are required to be executed outside the jurisdiction of the court. Section 78[3] authorizes the Court issuing warrant to forward the warrant by post or otherwise to any Executive Magistrate or District Superintendent of Police etc., within the local limits of whose jurisdiction such a warrant is to be executed. Therefore Section 78 contains an exception to the general principle enunciated under

Section 72 which we have already noticed. Obviously, Section 78 is to be invoked when it is known to the Court issuing warrant that a person accused before the said Court of an offence is available at certain place which does not fall within the local limits of the jurisdiction of the said Court.

Section 79 deals with execution of warrants directing the police officers to arrest an accused in the process of investigation of the crime where such an arrest is required to be made beyond the local limits of the jurisdiction of the Court issuing the warrant. Section 79 stipulates that an officer executing the warrant shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer incharge of the police station within the local limits of whose jurisdiction the warrant is proposed to be executed. Sub-section (2) declares local police shall if so required assist the officer executing the warrant. However, sub-section (3) creates an exception to rules contained in sub-section (1) i.e., the requirement of obtaining the endorsement of either an Executive Magistrate or the local police officer is given a go-by if the officer executing the warrant has reason to believe resorting to such a procedure will prevent the execution of a warrant.

It is in the light of the above mentioned provisions of the Criminal Procedure Code, the various grounds of attack in the writ petition are required to be examined.

Admittedly, the petitioners were apprehended by the respondents 7 to 15 at Barabankhi on 31.8.2006 at about 13.30 Hours and brought to Andhra Pradesh and produced before the Judicial Magistrate of First Class, Metpally on 2.9.2006. In substance, the petitioners were arrested and produced before the Magistrate. The expression ***`arrest'*** is not defined under the Criminal Procedure Code. The Supreme Court considered the import of the expression in

Directorate of Enforcement v. Deepak Mahajan and another[4] and held as follows :

> "The word `arrest' is derived from the French word `Arreter' meaning "to stop or stay" and signifies a restraint of the person. Lexicologically, the meaning of the word `arrest' is given in various dictionaries depending upon the circumstances in which the said expression is used. The word `arrest' when used in its ordinary and natural sense means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of hs personal liberty to go where he pleases. When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence."
>
> See also ***Spicer vv. Holt***[5] at page 277

From the counter affidavits filed by respondents 7 to 15, it is the case of the respondenst that the 1st petitioner was arrested in execution of the NBW referred to earlier and the petitioners 2 to 5 were arrested because they obstructed the respondents 7 to 15 while they were arresting the 1st petitioner. The 7th respondent in his affidavit at para (3) in this regard stated as follows :

> "…. We have identified the 1st petitioner and took in to custody by

> informing that five N.B.Ws were pending against him in Karimnagar District. The other four persons, petitioners 2 to 5 herein, who were accompanying the 1st petitioner, obstructed us in discharge of our duties. On that, suspecting them to be extremists, took them also into custody along with their baggage's, …."

As we have already noticed, Section 41(1)(a) authorizes any police officer to arrest any person even without a warrant, if such a person sought to be arrested has been concerned in any cognizable offence etc. It is the case of the respondents which we do not see any reason to disbelieve that the 1st petitioner is an accused in five cognizable offences. Therefore, the Code of Criminal Procedure authorizes the arrest of the 1st petitioner even without the existence of a warrant. It is a different matter that atleast in one case by the date of the arrest of the 1st petitioner, a warrant was also pending for the arrest of the 1st petitioner.

Insofar as the petitioners 2 to 5 are concerned, it is the case of the respondents that they were arrested on 31.8.2006 at Barabankhi only because they obstructed the respondents 7 to 15 in the execution of their duty of arresting the 1st petitioner. The fact that the petitioners resisted the arrest is admitted by the 1st petitioner in his affidavit at para (2) is as follows :

> "…. A group of 10 people who were identified later as policemen from Andhra Pradesh (Respondents 7 to 15) surrounded us and told one of us that they are police from Andhra Pradesh, and they have come to arrest us. While we were ***resisting*** the people…"

Therefore, we are of the opinion that the requirements of Section 41 are clearly met in the present case. Section 41(1)(a) in the case of the 1st petitioner and (e) in the case of the other petitioners.

The next question is whether respondents 7 to 15 are duly authorized under law to arrest the petitioners at Barabankhi.

Respondents 7 to 15 are police officers appointed by the State of Andhra Pradesh. They have such power, authority as is authorized by any law which is in force in the State of Andhra Pradesh either made by Parliament or by the Legislature of the State. Obviously, such powers or authority is invested in the police officers for the enforcement of such laws. The enforcement of laws is part of the constitutional obligation of the State and its officers subject to the limitations imposed by the law. Such an obligation to enforce the law is an obligation cast on the executive under the Constitution. The respondents 7 to 15 are part of the executive machinery of the State of Andhra Pradesh and their authority or obligation to enforce the law is normally confined to the territory of State of Andhra Pradesh in view of Article 246(3) read with Article 162 of the Constitution of India. While Article 246(3) authorizes the Legislature of the State to make laws for the State or any part thereof, Article 162 makes the executive power of the State to be coextensive with the legislative power of the State. Therefore, normally the respondents 7 to 15 in their capacity as police officers of the State of Andhra Pradesh could not have arrested the petitioners beyond the territory of Andhra Pradesh unless there is something in the law which authorizes them to so arrest. Though the Criminal Procedure Code authorizes even private persons to arrest any other person under Section 43, such an authorization is available only in two contingencies viz., when the person sought to be arrested commits a non-bailable and cognizable offence in the presence of the

private person seeking to arrest or where the person sought to be arrest is a proclaimed offender. The respondents 7 to 15 in our view would assume the character of private persons outside the territory of Andhra Pradesh and if they wish to arrest any person in their private capacity. The only authority of law for such action in our view is to be found under Section 43.

But on the facts of the case, none of the petitioners are proclaimed offenders nor is the case of the respondents that the petitioners committed any non-bailable cognizable offence in the presence of respondents 7 to 15 at Barabankhi. It is the definite case of the respondents 7 to 15 that they went to Barabankhi by virtue of an authorization given by the 3rd respondent to arrest only the 1st petitioner. In fact, the Xerox copy of the authorization given by the 3rd respondent is available in the material papers filed along with the counter. The relevant portion reads as follows :

> "The bearer V.Sampath Kumar, S.I., P.Nagaiah, R.S.I., PCs 2895 N.V.Giri, 1716 V.Yellaiah, 2897 D.Damodhar, 2049 Y.Ramesh, 2328 Md. Shabir Ali, 1417 mallesham and 732 ARIs of the Andhra Pradesh Police is directed to proceed on special duty to apprehend the U.G. extremist Kura Rajaiah at Barabanki of U.P.State.
>
> All magistrates, police officers, and other public servants are earnestly requested to afford the bearer such assistance as may lie in their power in the interests of justice."

It is clear from the tenor of the above extracted authorization that it does not make any mention about the pendency of any warrant against the 1st petitioner. For the sake of the present, as we have already recorded that we do not see any reason to disbelieve

the existence of warrants against the 1st petitioner. But if the 1st petitioner was arrested in pursuance of the execution of the pending warrants, the respondents are required to satisfy the court that such an arrest is made in accordance with the procedure established by law i.e., the Criminal Procedure Code.

The only warrant as it appears from the record placed before us against the 1st petitioner as on the date of his arrest is the warrant issued by the Judicial First Class Magistrate, Sircilla in PRC No. 161 of 2005 in Cr No. 10 of 2003 under Sections 148, 302 r/w 149 ICP. The said warrant was directed to Inspector of Police, Konaraopet to arrest the 1st petitioner and produce him before the Judicial First Class Magistrate, Sircilla. The warrant is dated 12.8.2006. We must hasten to add that we are not recording any finding about the existence of any other warrant against the 1st petitioner as on the date of his arrest. The above mentioned warrant dated 12.8.2006 could have been executed by the Inspector of Police, Konaraopet anywhere in India by arresting the 1st petitioner in view of the declaration contained under Section 77 of the Criminal Procedure Code which reads as follows :

> ***77 Where warrant may be executed. .***-A warrant of arrest may be executed at any place in India.

Section 74 of the Criminal Procedure Code authorizes the execution of a warrant by any police officer other than the one to whom it is directed if such a warrant is endorsed, as prescribed under section 74. Section 74 reads as follows :

> ***74 Warrant directed to police officer.-*** A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or

endorsed.

The learned Advocate General appearing for the respondents argued that since at least one warrant was pending execution against the 1st petitioner on the date of his arrest, such a warrant could either be executed by the Inspector of Police, Konaraopet or by some other police officer in whose favour such a warrant is endorsed in accordance with Section 74 by the Inspector of Police, Konaraopet. He further argued that by virtue of the powers conferred under Section 36[6] of the Code on the superior police officers, such an endorsement could be made by the 3rd respondent in favour of respondents 7 to 15 and it is in exercise of the power under Section 36, the 3rd respondent authorized the respondents 7 to 15 to arrest the petitioner No.1. In the alternative, the learned Advocate General submitted that Section 55 of the Code authorized the officer incharge of a police station ***"may require any officer subordinate to him to arrest any person who may lawfully be arrested without a warrant."*** Therefore, the 3rd respondent – Superintendent of Police, Karimnagar District who is a superior to the 5th respondent within whose jurisdiction cognizable offences are registered and pending investigation against the 1st petitioner herein is competent to direct respondents 7 to 15 to arrest the 1st petitioner herein and respondents 7 to 15 are authorized by law under Section 48 of the Code to pursue the 1st petitioner into any place in India for the purpose of arresting him.[7] Therefore the arrest of the 1st petitioner is in accordance with the law even in case this Court comes to the conclusion that the procedure established by law for arresting a person in execution of a warrant is not complied with.

We accept the submission of the learned Advocate General that Section 36 does in fact authorize the 3rd respondent to endorse the warrant pending against the 1st petitioner in favour of any other police officer like respondents 7 to 15 on the authority in **K.G.Kannabiran v. Chief Secretary, Govt. of A.P., Hyderabad and others**[8].

> "… Any special squad to arrest Madhusudan Raj yadav must emanate from the Officer-in-charge fo the police station Mulug or of Venkatapur or of Bhupalpalli and not from any other person or source except, of course, the officers superior in rank to the Officer-in-charge of the aforementioned police stations who, under Section 36 of the Code of Criminal Procedure, can exercise same powers throughout the local area to which he is appointed as may be exercised by such Officer-in-charge within the limits of his station…."

But the question is whether such an endorsement is made. Section 74 of the Code requires such an endorsement is to be made upon the warrant. The copies of the warrant filed before us do not establish any such endorsement. Without deciding the question whether the expression ***"name is endorsed upon the warrant"*** occurring in Section 74 is capable of being interpreted that such an endorsement need not be necessarily be on the document of warrant issued by the Court, no other document making such an endorsement is placed before us. The only document is the authorization issued by the 3rd respondent, (the content of which is already extracted earlier) makes no reference to any warrant. Therefore, we are of the opinion, that there is

a clear violation of the procedure established by law under Section 74 in arresting the 1st petitioner.

Coming to the alternative submission of the learned Advocate General, no doubt Section 55 enables the 3rd respondent to direct the respondents 7 to 15 herein to arrest the 1st petitioner otherwise than by way of execution of a warrant, but Section 55 requires the 3rd respondent ***"to deliver ….. an order in writing specifying the person to be arrested and the offence or other cause for which the arrst is to be made.***[9]***"*** The authorization issued by the 3rd respondent does not specify the offence or other cause for which the arrest of the 1st petitioner is to be made.

Further, it is the clear case of the petitioners that no warrants of arrest authorizing the respondents 7 to 15 to arrest the petitioners were shown to them. At para (3) of the affidavit filed in support of the writ petition, it is stated as follows :

"…. No warrants of arrest were shown to us."

Section 75 of the Code requires that the warrants of arrest are required to be shown to the persons sought to be arrested if such a person demand so. Section reads as follows :

> **"75 Notification of substance of warrant**. .-The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

The 7th respondent in his affidavit stated that that the 1st petitioner was informed that he was being arrested in the execution of pending five N.B.Ws, (the relevant portion of the affidavit is already extracted earlier). Therefore, the requirement of Section 75 to the

extent of notifying the substance is satisfied. Insofar as the other requirement of Section 75 of issuing the warrant is concerned, the 1st petitioner did not plead in his affidavit that he made such a demand. Naturally, the respondents remained silent of this aspect. We therefore propose to express no opinion on the question of violation of the second limb of Section 75 of the Code.

Assuming for the sake of argument that the respondents 7 to 15 are duly authorized to execute the warrants against the 1st petitioner outside the territory of Andhra Pradesh, the further question would be whether such execution was carried out in accordance with the procedure established by law or not.

Learned Senior Counsel for the petitioners Sri Tarakam argued that there is a non-compliance with Section 78 and 79 of the Cr PC. (We have already taken note of the substance of Section 78 and 79 of the Code). Sri Tarakam argued that since the respondents knew that the 1st petitioner is required to be arrested outside the jurisdictional limits of the Court which issued the warrants, the respondents ought to have taken steps to obtain an appropriate order under Section 78 of the Code from the Magistrate who issued the warrant to get the warrant forwarded to either the Executive Magistrate or the District Superintendent of Police within the local limits of whose jurisdiction the warrant is to be executed.

We reject the submission of the learned counsel as the language of Section 78 does not impose any such obligation. It only enables the Magistrate to forward the warrant to the authorities of the District where the warrant is required to be executed. Section 78 reads as follows :

> **78 Warrant forwarded for execution outside jurisdiction** . .-
> (1) When a warrant is to be executed

> outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.
> (2) The Court issuing a warrant under sub-section (1) shall forward along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under Section 81 to decide whether bail should or should not be granted to the person.

It is obvious from the language that it is not compulsory in every case that the Magistrate should necessarily resort to the alternative procedure contemplated under Section 78.

Coming to Section 79, it mandates that whenever a warrant is required to be executed outside the jurisdiction of limits of the Court issuing warrant, the police officer executing such a warrant shall ***ordinarily*** take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer incharge of a Police Station within the local limits of whose jurisdiction the warrant is to be executed. However, sub-section (3) of Section 79 authorises the police officers executing a warrant to give a go by to the procedure contemplated under sub-section (1) of Section 79. If such an officer has a reason to believe that obtaining such an endorsement would prevent

the execution of the warrant by virtue of the delay which is likely to be occasioned in obtaining the endorsement. The counter affidavits filed by the respondents do not disclose that either such an endorsement as contemplated under Section 79(1) is taken or any material is placed before this Court to demonstrate that the respondents 7 to 15 were of the opinion that obtaining such an endorsement would prevent the execution of the warrant. Apparently, the respondents 7 to 15 were oblivious of the requirement of law under Section 79 of the Code.

Coming to the arrest of the petitioners 2 to 5, assuming for the sake of argument that the respondents were justified in arresting them on the ground that they resisted the arrest of the 1st petitioner, it is an offence committed within the local limits of Barabankhi District and therefore the petitioners 2 to 5 ought to have been produced before the Magistrate having jurisdiction with reference to the place where the offence took place as per the requirement of Section 56 of the Cr PC which reads as follows :

> **56 Person arrested to be taken before Magistrate or officer-in-charge of police station**. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer-in-charge of a police station.

Instead of producing the petitioners 2 to 5 before the concerned Magistrate, the respondents choose to bring the petitioners to the State of Andhra Pradesh. During the course of the transit, it is alleged that all the petitioners attempted to escape the custody. Therefore, a fresh case is registered in Cr. No. 174 of 2006 of Metpally Police Station and

it is on that allegation that the petitioners are triable for the various offences as mentioned in the FIR, the petitioners were produced before the Judicial First Class Magistrate, Metpally. Whether the petitioners in fact made any attempt to escape the custody of the respondents or not is a question of fact which can be decided only on evidence during the course of the trial of the said offence. Whether the petitioners were in possession of any arms or explosive substances as alleged by the police is also a question of fact to be decided on evidence. Therefore, we do not propose to go into the truth or otherwise of those allegations as it is not normally done in the writ proceedings as such an examination would require an examination of disputed questions of fact.

In the above mentioned factual background and the lapses on the part of the respondents in complying with the requirements of law while depriving the petitioners of their liberty guaranteed under Article 21 and 22 of the Constitution of India, it becomes necessary to examine whether the petitioners are entitled for the relief such as the one claimed in the present writ petition.

Learned counsel for the petitioner Sri Tarakram argued that in view of the various infractions of the provisions of the Criminal Procedure Code (which we have already noticed) the arrest of the petitioner is illegal and consequentially the detention of the petitioners in custody although by a judicial order is illegal. It is submitted very emphatically that in view of the decision of the Supreme Court in the matter of **Madhu Limaye and others** [10] the mere fact that the petitioners are remanded to custody by a judicial order does not legalise their illegal arrest and therefore they are entitled to be released forthwith. Therefore examination of **Madhu Limaye's case** is essential.

Madhu Limaye along with others were arrested on

November 6, 1968 for holding a meeting for violation of a prohibitory order issued under Section 144 CrPC. They were produced on the same day before the concerned Sub-Divisional Magistrate and were remanded to custody till 20th November as they refused to furnish bail bonds. The remand order stated that ***"arrested and forwarded under custody under Sections 151, 107, 117 CrPC by Sub-Inspector, Government Railway Police Station, Kiul."*** The said detention order was challenged by way of a petitioner under Article 32 of the Constitution of India. One of the grounds was that Limaye and others had not been communicated the reasons or grounds of arrest. The other ground is that they had been arrested for offences which were non-cognizable. By the time the matter came to be heard by the Supreme Court, a crime came to be registered under Section 143 IPC which is a cognizable offence. The Supreme Court directed the release of Limaye and others only on the ground that there is a violation of Article 22(1) inasmuch as the allegation of Limaye and others that they were not informed of the ground for their arrest went unrebutted. At para (14) their Lordships held so :

> "(14) We would like to make it clear that we have ordered the release of Madhu Limaye and the other arrested persons with regard to whom rule nisi was issued on the sole ground of violation of the provisions of Article 22 (1) of the Constitution. We desire to express no opinion on the legality or illegality of the arrests made on 6/11/1968 of these persons with reference to the first point, namely, that the police officers purported to have effected the arrests for the offence under S. 188, Indian Penal Code, and under S. 151 as also in respect of proceedings under S. 107 of the Cr. P. C. , as these matters are sub judice. We may also proceed to

> add that any expression of opinion or observation in these proceedings shall not affect the course of the enquiry or trial of the arrested persons concerning the occurrences on November 5 and 6, 1968 which may be pending in the Courts in the State of Bihar and such proceedings shall be disposed of in accordance with law."

In our view Limaye's case is an authority only for a limited proposition that where a person is detained by the State without being intimated the reasons for such detention, there is a violation of Article 22(1) and consequentially is entitled for a Writ of Habeas Corpus. Limaye's case is not an authority for a proposition of law that in every case where some provision of law either of Criminal Procedure Code or some other law dealing with the arrest of a person is violated, the writ of habeas corpus issues. It is clear from the above extracted paragraph of the judgment that their Lordships expressed no opinion about the legality of the arrest of Limaye and others. Their Lordships did not come to the conclusion that Limaye and others were entitled to be released on the ground that the arrest of Limaye and others was illegal.

Applying the ratio of Limaye to the facts of the case on hand, it is not the specific case of the petitioners that the 1st petitioner was not informed the reasons for his arrest. The only assertion made in the affidavit filed in support of the writ petition by the 1st petitioner is that the warrants were not shown to him. On the other hand, the 7th respondent in his counter affidavit categorically stated that the 1st petitioner was informed the execution of five NBWs pending against him in Karimnagar District.

In the light of our discussion, there is a non-compliance with Section 55 of the Code if the 1st petitioner is to be treated as

arrested otherwise than in execution of a warrant. On the other hand, if the 1st petitioner is to be treated as arrested in execution of the warrant, there is a non-compliance with the requirements of Section 74 and 78 of the Code. At any rate we must make it clear from the counter affidavits filed by respondents 5 and 7, the 1st petitioner is purported to have been arrested in execution of the various NBWs which are already referred to earlier in this judgment.

The next question is whether the 1st petitioner is entitled to be released in view of the above mentioned non-compliance with the procedure established by law.

During the course of the hearing of the matter, we summoned the records pertaining to the five PRCs referred to earlier from the concerned court in which the 1st petitioner is alleged to be an accused which are already numbered as Sessions Case Nos. . We are satisfied that the 1st petitioner is an accused in five sessions cases out of which in four cases he is required to be tried for an offence under Section 302 IPC and in the 5th case for an offence under Section 307 IPC apart from various other charges and we also noticed from the said records that the 1st petitioner is absconding from the process of law. In the said circumstances, setting the 1st petitioner at liberty on the ground that there is a non-compliance with the procedure established by law in apprehending the 1st petitioner would not advance the purpose of law nor the larger interest of the society. Where there is a conflict between the freedom of individual and the interest of the society at large in finding out wrong doers and repressing crime, the Court is called upon to find a delicate balance between the two conflicting interests. The various safeguards ensured under Article 21 and 22 of the Constitution of India and also

the various provisions of the Criminal Procedure Code dealing with the arrest of a person are basically meant to eliminate illegal detention by the police for an uncertain period and also to avoid physical violence to the arrested person at the hands of the police. In the present case, there is not allegation of any physical violence against the petitioners apart from the fact that they were produced before the Magistrate within a reasonable time thereby eliminating any further chance of custodial violence. In such factual background, the non-compliance with the various provisions of the law in our view is technical for which the 1st petitioner has remedies upon to seek an appropriate compensation in law.

We have already reached the conclusion that the arrest of the petitioners 2 to 5 at Barabankhi by the respondents herein is without authority of law. Accepting the allegation that they resisted the arrest of the 1st petitioner and therefore committed an offence, such an offence took place in the territory of Uttar Pradesh, the respondents 7 to 15 could only have complained to the concerned Police Station and handed over the petitioners 2 to 5 to the police station for the law to take its own course. Instead, they were brought to the State of Andhra Pradesh.

Coming to the case of the petitioners 2 to 5, we have already noticed earlier that they were arrested by the respondents on the ground they resisted the arrest of the 1st petitioner and therefore they could be arrested without a warrant in view of the provision contained under Section 41(1)(e) of CrPC. But such an offence took place at Barabankhi within the territory of Uttar Pradesh. The respondents ought to have lodged a complaint at the Police Station having the jurisdiction over the area where such an offence took place and handed them over to Uttar Pradesh police to be tried in accordance

with the law. However, the respondents choose to bring them to Andhra Pradesh without any authority of law whatsoever and in the process it is alleged that the said petitioners committed various offences punishable under Sections 143, 353, 224 r/w 149 IPC. Section 143 prescribes punishment for an offence of unlawful assembly. Section 353 prescribes a punishment for assault or criminal force to deter public servant from discharge of his duty. Section 224 prescribes punishment for any resistance or illegal obstruction to the lawful apprehension or an escape or attempt to escape from the lawful custody. Subsequently, the respondents sought to add Sections 506, 120B, 124A IPC, Section 7 of the Criminal Law Amendment Act, Section 25(1)(B)(a) of the Arms Act, 1959 and Section 5 of the Explosive Substances Act, 1908. We do not propose to examine in detail whether the contents of the FIR do in fact constitute all or any of the above mentioned offences against petitioners 2 to 5 herein, but assuming so for the present, even then the offences under Section 143 and 353 occurred in the territory of Uttar Pradesh. Insofar as the offence under Section 224 though it is not very clear from the First Information Report whether it is on account of the resistance offered by the petitioners for the arrest of the 1st petitioner or on account of the alleged attempt of the petitioners 2 to 5 to escape from the custody of the respondents after they entered the territory of Andhra Pradesh. If the charge is on the 1st of the above mentioned two counts, the offence once again was committed in the territory of Uttar Pradesh. On the other hand, if the charges on the 2nd count mentioned above, petitioners 2 to 5 in our view were never in the lawful custody of the respondents 7 to 15. Insofar as the offences under the Arms Act and Explosives Act are concerned, assuming for the sake of argument that the petitioners 2 to 5 were in possession of arms and explosives as

alleged by the respondents, admittedly such arms and explosives were allegedly found in the baggage of the petitioners which was with the petitioners 2 to 5 when they were apprehended at Barabankhi and therefore the said offences were committed outside the State of Andhra Pradesh. The fact that such possession of arms and explosives were discovered by the respondents after the petitioners were brought under false arrest along with their baggage in our view cannot make it an offence committed in the State of Andhra Pradesh as the petitioners 2 to 5 did not voluntarily enter the State of Andhra Pradesh. Insofar as the other offences under Section 120-B, 124-A and Section 7 of the Criminal Law Amendment Act are concerned, there is not even a whisper in the FIR which can even remotely suggest that the petitioners 2 to 5 are in any way involved in such offences. We therefore hold that the detention of the petitioners 2 to 5 is clearly illegal and they are entitled to be released as prayed for.

J.Chelameswar, J

D.Appa Rao, J

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19th January, 2007

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[1] **51 Search of arrested person**

(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing- apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. Corresponding old law. Sections 51 and S.52 of the Code of Criminal Procedure, 1898 of the Code (V of 1898).

[2] **52 Power to seize offensive weapons**

The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested. Corresponding old law Section 53 of the Code (V of 1898).

[3] **78 Warrant forwarded for execution outside jurisdiction**. .-

(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under Section 81 to decide whether bail should or should not be granted to the person.

Corresponding old law.-Sections 83 (1) anci (2) of the Code (V of 1898)

[4] (1994)3 SCC 440

[5] (1976) 3 Cr App R 270

[6] **36 Powers of superior officers of police**

Police officers superior in rank to an officer-in-charge of a police station may exercise the same powers, through- out the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

[7] **48 Pursuit of offenders into other Jurisdictions**

A police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, pursue such person into any place in India.

[8] 1997(4) ALT 541 (DB)

[9] **55 Procedure when police officer deputes subordinate to arrest without warrant**

(1) When any officer-in-charge of a police station or any police officer

(2) Nothing in sub-section (1) shall affect the power of a police officer to arrest a person under Section 41. Corresponding old law.-Section 56 of the Code (V of 1898).

[10] 1969(1) SCC 292